IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

RCRev..No. 350 of 2007

RCA.20/2007 of II ADDL. DISTRICT COURT, TRIVANDRUM
RCP.71/2001 of ADDL.M.C.,TRIVANDRUM
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REVISION PETITIONER/APPELLANT/ COUNTER PETITIONER:

SAHADEVA PANICKER,
S/O.GOVINDA PANICKER,
RESIDING AT VALIYAPAMBADI,
JAGATHY, THIRUVANANTHAPURAM.

BY ADV. SRI.B.S.SWATHY KUMAR
SRI.K.HARILAL
SRI.BINDU SREEKUMAR

RESPONDENT/RESPONDENT/PETITIONER:

JAYASREE.S., D/O. SARASAMMA,
RESIDING AT T.C. 5/1672,
AMBALAMUKKU, PEROORKADA P.O.,
THIRUVANANTHAPURAM.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

R.C.R.No. 350 of 2007

ORDER

Balakrishnan Nair, J.

The tenant is the revision petitioner and the landlady is the respondent. The Rent Control Petition was filed in November 2001, claiming eviction under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). The Rent Controller allowed the application. But, on appeal, the appellate authority remanded the matter, giving a further chance to both sides to adduce evidence. On remand, certain documents were produced by both sides. One of the documents summoned by the tenant was Exhibit X4 series files.

2. The Rent Controller re-considered the matter on the basis of the evidence on record,

including those tendered after the remand and allowed the application under Section 11(3) of the Act. The tenant filed appeal R.C.A.No.20/07. The said appeal was dismissed by the appellate authority, by judgment dated 15.11.2007. Hence this revision.

3. The respondent/landlady claimed that she is running an industrial unit, manufacturing plastic carry bags, at Uzhamalakkal in Thiruvananthapuram District. It is a very remote area. She wanted the scheduled building, which is situated in Thiruvananthapuram city, for housing an Office and a godown of her industrial unit. For some time, her residential building was used for the said purpose. But, it was closed down due to insufficiency of space.

4. The tenanted premises is in the up stair portion of a large building. It is having two Door Nos.TC.28/2185 and TC.28/2186. The tenant is conducting a chitty business under the name and

style of Pravoor Chitty Fund and he is also running a money lending business there. The tenant has got other buildings in his possession. There are other rooms available in the locality for shifting his business. The tenant has got other businesses and he is not solely depending upon the income from the tenanted premises for his livelihood. The petitioner has no other room in her possession to house the godown and office of her industrial unit. Therefore, she is in bona fide need of the tenanted premises. So, eviction was sought. The tenant resisted the application, denying the claim of bona fide need. All possible defences were also taken.

5. As mentioned earlier, the authorities below concurrently ordered eviction under Section 11(3) of the Act. The learned senior counsel Sri.Achutha Kurup attacked the said finding on various grounds. According to him, Exhibit X4 files produced would show that the petitioner is not having any substantial business. The turn over, as per the

returns, is very meagre and the tax paid is only nominal. In some of the months nil returns have been filed. Therefore, the claim made for her own occupation of the large up stair portion of the building is without any bona fides. According to the learned counsel, the landlady does not run any business and the requirement is only a convenient ruse to evict the petitioner. Further, the building, being in the up stair portion and the staircase being very narrow, it cannot be used as a godown, as there is difficulty to carry goods to the up stairs. The learned counsel also pointed out that in the notice dated 7.8.2001, issued demanding vacant possession the claim under Section 11(2)(b) alone was made. Three months thereafter the Rent Control Petition was filed, including the claim under Section 11(3) of the Act as well. That shows, there was no bona fide need for the petitioner. Absence of the ground under Section 11 (3) of the Act in the notice will belie the bona

fides of the requirement of the landlady, it is submitted.

6. We notice that the authorities below upheld the claim of the landlady for her own occupation of the tenanted premises based on the evidence on record. Even if her business is not flourishing, the claim of the landlady to have an office and a godown cannot be condemned as lacking bona fides. According to her, if she gets the tenanted premises, she can canvass more business and thereby her business will flourish. The said contention has been accepted by the authorities below. We feel that it is a reasonable view on the facts of the case. Further, for seeking eviction under the provisions of Section 11(3) of the Act, notice is not mandatory unlike the case of eviction sought under Sections 11(2)(b) and 11(4)(i) of the Act.

7. The learned counsel took us through paragraph 8 of the appellate authority's judgment and pointed out that the rental income from the

tenanted premises will be higher when compared to the income from the business. The said point was canvassed before the appellate authority as well. But, the appellate authority has rightly held that it is the choice of the landlady and the tenant cannot suggest or dictate terms to her as to how she should conduct her affairs.

8. Essentially the findings in favour of the landlady under Section 11(3) of the Act are findings of fact. The appellate authority, being the final court of fact, we are not justified in interfering with the same. We fully agree with the reasons and conclusions of the authorities below. The contentions advanced by the learned senior counsel are not sufficient to interfere with those findings.

In the result, the revision fails and it is dismissed. The learned senior counsel for the petitioner prayed for some time to vacate the tenanted premises. We heard the counsel for the

respondent on this point. We notice that the petitioner is running a business in the tenanted premises. Therefore, he is granted six months' time from today to vacate from the tenanted premises on condition that he withdraws his contentions and files an unconditional undertaking, in the form of an affidavit, before the execution court within three weeks from today, undertaking to vacate the tenanted premises within six months from today. The petitioner shall pay the monthly rent due from time to time till the tenanted premises are vacated.

(K.Balakrishnan Nair, Judge)

27th November, 2007

(K.P.Balachandran, Judge)

tkv